STATE OF WISCONSIN PERSONNEL COMMISSION

GENEVIEVE SANDERS,

Appellant,

v.

Secretary, DEPARTMENT OF REVENUE,

Respondent.

Case No. 89-0076-PC

FINAL DECISION AND ORDER

This matter is before the Commission following the issuance of a proposed decision and order by the hearing examiner. Appellant has filed objections to the proposed decision and order and both parties have argued before the Commission.

The Commission adopts as its final disposition of this matter the proposed decision and order, a copy of which is attached hereto and incorporated by reference as if fully set forth. Appellant's primary argument is that the proposed decision attached undue weight to the testimony of one John Bell, a Property Assessment Specialist 3, who testified that appellant caused certain changes to be made in Town of Gordon values for blatantly political reasons. Appellant points out that this action was not given as a reason for demotion. However, it is not being considered as part of respondent's just cause rationale for the demotion, but rather as evidence of another transaction which is relevant to the question of whether the act that was charged occurred as alleged. Furthermore, to the extent that appellant is arguing that this evidence was improperly admitted, it is noted that no objection was made at hearing.

Appellant also makes the point that Mr. Bell did not come forward with this information at the time the incident occurred or during the investigation of the Town of Washington matter. The Commission does not believe that on this record that it follows from Mr. Bell's inaction that his credibility is undermined. It is just as possible that his initial failure to come forward was motivated by a desire not to create problems for appellant, a desire not to get involved, etc.

ORDER

The proposed decision and order is adopted as the Commission's final disposition of this case, and respondent's action demoting appellant is affirmed and this appeal is dismissed.

Dated: November 16, 1990 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

AJT:rcr

DONALD R. MURPHY, Commissioner

GERALD F. HODDINOTT, Commissioner

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STATE OF WISCONSIN PERSONNEL COMMISSION

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PROPOSED
DECISION
AND
ORDER

## NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(c), stats., of an involuntary demotion.

## FINDINGS OF FACT

1. At all relevant times appellant has been employed by respondent in the classified civil service with permanent status in class.

2. Prior to her June 9, 1989, demotion to a position classified as Property Assessment Specialist 3, appellant occupied a position classified as Property Assessment Supervisor 2 in the DOR (Department of Revenue) Eau Claire District Equalization office.

3. The working title of appellant's Property Assessment Supervisor 2 position was Supervisor of Equalization. Appellant was responsible for the direction of the district equalization program and reported to Glenn Niere, Chief of the Equalization Section, Bureau of Property Tax, whose position is classified as Property Assessment Supervisor 3.

4. DOR's equalization program is mandated by §70.57, stats. In summary, the program involves the annual establishment of the fair market

value of taxable real property for all municipalities throughout the state. This program is necessary to assure that municipalities, whose assessors may be assessing property at different relative levels above or below fair market value, are taxed, allocated state aid, and allowed to incur debt, in proportion to the actual fair market value of their property.

5. Because it may be in the best interests of the property owners in a tax district to keep assessed values low, frequently political pressures are brought to bear on the local assessor and DOR to accede to these interests in connection with assessments and the equalization program. Because of DOR's key role through the equalization program of maintaining uniform property values throughout the state for taxation and other purposes, DOR has a legitimate and substantial interest in attempting to ensure that employes in the equalization program are not influenced by political pressure.

6. The Town of Washington in Eau Claire County during the period relevant to this case contained a large percentage of agricultural land parcels which were not being used for serious farming but which were being used as "hobby farms," or for future residential development purposes. There was substantial concern among many Town of Washington property owners and elected officials that as a result of this situation the agricultural outbuildings in the town were assessed over their fair market value, since such buildings usually added little to the value of such property when typically buyers did not intend to use it for any substantial agricultural purposes.

7. As a result of the foregoing concerns, Town of Washington elected officials sought to have the town assessor, Jerry Coenen, lower the value of agricultural outbuildings. These officials and the assessor also made efforts to persuade appellant, who could be said to have the "last word" on

assessed property values in the town through the equalization program, to lower the value of agricultural outbuildings. These efforts at lowering the assessed values of agricultural improvements included three or four meetings of town officials attended by appellant where the aforesaid concerns about the assessment of agricultural outbuildings were aired. They also included communications between the township assessor and appellant urging that these values be lowered. In a letter dated January 30, 1989, from the assessor to the town board chair, Respondent's Exhibit 8, the assessor stated as follows:

> Currently, agricultural outbuildings in the township are receiving two measures of depreciation. Firstly, physical depreciation is deducted from the replacement cost new of the structure. This varies depending on the age and condition of the building. Secondly, a deduction of 50% is given because of economic and/or functional reasons. This measure of depreciation is fairly constant throughout the township.
>
> It is this functional and economic obsolescence that perhaps should be changed or increased. Should the Board wish, the obsolescence factor could be increased from 50% to 80%. An example of the effect this will have is as follows...

The assessor sent a copy of this letter to the appellant with the following handwritten note thereon:

> Am keeping you informed abut T-Wash matters — attached is my game plan for Ag outbuildings for 1989. Any similar moves on EQUALIZED would be appreciated.

8. Appellant became the equalization supervisor at the Eau Claire office in January or February, 1986. At least partly as the result of changes appellant implemented which tightened up policies on leave and employes' accountability for their whereabouts, there was a good deal of resentment and dislike of appellant by many of the rank and file employes she supervised.

9. John J. Bell was a Property Assessment Specialist 3 under appellant's supervision during the period in question. He got along with

appellant and was not hostile to her. His area of responsibility included the Town of Gordon in Douglas County. Sometime during the beginning of May, 1989, appellant told him that it would be a wise political move if he could cut values in the Town of Gordon as much as possible. He inquired why he should do this, indicating that he had done his work there and this was not indicated. She replied that there was a Realtor there by the name of Finstad who was on a realty board with Mark Bugher (Secretary of DOR), and it would be a good political move to make the cuts. Mr. Bell then reviewed the information for the Town of Gordon and left the adjustments as they had been originally (i.e., a 5% increase in residential values). He then submitted these figures and they were returned with changes made in writing by appellant that included reductions in the Town of Gordon of residential land, 25%, residential improvements, 5%, and commercial improvements, 5%. These reductions had not been preceded by any further communications on the matter between appellant and Mr. Bell. Pursuant to standard office policy, Mr. Bell made the changes in the Town of Gordon documents that appellant had directed.

10. Eleanor Wolf was a Property Assessment Specialist in the Eau Claire office and one of appellant's subordinates. She was not on good terms with appellant and was somewhat hostile to her. At one time during appellant's tenure, she made a statement to the effect of "We would be happier if Jenny was not in the office." One of the municipalities for which Ms. Wolf was responsible was the Town of Washington.

11. On April 17, 1989, appellant told Ms. Wolf that before starting on the Town of Washington analysis she should see her because she (appellant) had something that could help her. Subsequently, on April 27, 1989, when Ms. Wolf was ready to start on the Town of Washington, she sought out appellant.

Appellant told Ms. Wolf she wanted her to lower the equalized valuation for the Town of Washington agricultural improvements. Appellant handed Ms. Wolf a piece of paper (Respondent's Exhibit 9) in appellant's handwriting that contained the 1988 and the new (1989) valuations for the Town of Washington agricultural improvements — i.e., $8,239,700 and $5,987,000, respectively. Ms. Wolf said she didn't think she could do that because she had not lowered these values for the other towns. Appellant then said words to the effect of "Do it, it's political, add it to the residential improvements if you have to."

12. Subsequent to this conversation, Ms. Wolf analyzed the material for the Town of Washington and determined that the available data was inadequate to support a reduction in the valuation of the Town of Washington agricultural improvements. Included in the packet of materials on the Town of Washington with which Ms. Wolf had been provided was the letter from the town assessor to the town board identified as Respondent's Exhibit 8, which was quoted above in Finding No. 7.

13. Ms. Wolf then submitted her recommended values with no change indicated for the Town of Washington agricultural improvements. On May 8, 1989, she fond her working papers back on her desk with a handwritten sheet (Respondent's Exhibit 7) on top. This sheet contained, in the handwriting of Norm Schnagl, the Eau Claire field supervisor and her immediate superior, a list of the municipalities in Eau Claire County and either an "OK" or a recommended change alongside each one. He had an "OK" next to the Town of Washington which indicated he agreed with Ms. Wolf's results. Also on this document were appellant's handwritten notes, including changes in valuation. She had changed the Town of Washington by increasing the residential land by 10% and decreasing the agricultural improvements by 15%. Earlier that

morning (May 8th), appellant had made these changes and given them to Mr. Schnagl. She had not offered any explanation for the changes, and he had not sought any. Mr. Schnagl had placed the document on Ms. Wolf's desk believing them to be final in the absence of new developments, pursuant to normal operating procedures, discussed at further length below. Appellant also had given these figures to Ms. Karpe, the office Property Assessment Technician III for entry into the office computer system. Based on prevailing operating procedures, appellant's 15% reduction in the Town of Washington agricultural improvements entered on Respondent's Exhibit 7 would have been considered final in the absence of new developments between May 8, 1989, and the time they became the official DOR equalized values in early July. Appellant did not intend that these figures were to have been only tentative and/or a starting point for further analysis when she entered them on Respondent's Exhibit 7 and gave them to Ms. Karpe for entry into the computer.

14. Ms. Wolf was of the opinion that pursuant to standard office policy she was required to make the changes indicated by her supervisors on Respondent's Exhibit 7 on her equalization summary sheets, but she also was of the opinion that it would be unethical to do so. She proceeded to report this situation by phone to DOR Secretary Mark Bugher and Director of the Bureau of Property Tax Glen Holmes. Mr. Holmes ordered Chief of the Equalization Section Glenn Niere to go to Eau Claire to investigate the allegations.

15. Mr. Niere went to Eau Claire the next day (May 9, 1989) and conducted an investigation.

16. Mr. Niere interviewed appellant on May 9, 1989. Appellant made a number of points in her explanation to Mr. Niere as to why she reduced the valuation for the Town of Washington agricultural improvements. Mr. Niere

concluded that none of these points could legitimately explain the changes. The Commission finds that Mr. Niere's conclusions are supported by the record, that appellant at that time offered no legitimate explanation for the reduction, and that at the time she made the initial reduction of 15% in the agricultural improvements she acted without a legitimate basis for the reduction. Appellant's rationale for the reduction, accompanied by Mr. Niere's conclusions, and in some instances by additional findings relating thereto, follow in Findings 17-22.

17. Appellant stated that, based on three sales in the SAS report, the ratio of sale price to assessment was 117%. Mr. Niere concluded that this was not a legitimate reason for the reduction because there was an insufficient amount of data and in only one of the three sales relied on was the sales price less than the assessed value, similar ratios for other Eau Claire County municipalities varied widely, from 106% to 228% yet the Town of Washington was the only one that appellant recommended a reduction in agricultural improvements, and Eau Claire County had been field reviewed in 1986 for the 1987 equalized value, and therefore the agricultural improvements for all municipalities should have been uniformly valued and any changes should have been considered on a county basis.

18. Appellant also stated that she had talked to all the other local assessors in the county except one, and none other than the Town of Washington had suggested that agricultural improvements needed to be reduced. Mr. Niere concluded that this reason conflicted with the basic concept of the equalization program which was to base values on data and not to rely on the opinions of local assessors, which might be influenced by municipalities' interests in lower assessments.

19. Appellant also stated that she had met with Town of Washington officials on several occasions and they had explained their concerns that the valuation of agricultural improvements was excessive given the fact that frequently such land was not being purchased for true agricultural use and the agricultural outbuildings contributed little, if any, to the sale price. While Mr. Niere did not believe it was improper to meet with local officials and to listen to their concerns, he believed any change in valuation has to be based on data and not the expressed concerns of local officials.

20. Appellant also stated that the Town of Washington assessor who was very experienced and had previously worked for DOR, had conducted a study which supported the reduction. However, appellant had neither requested nor been provided with this study. Furthermore, Mr. Niere was concerned that the assessor had been influenced by the town board with respect to his opinion, as evidenced by the copy of the letter from him to the town board (Respondent's Exhibit 8), which was part of the Eau Claire district office file on this matter.

21. Appellant also stated that the reduction was tentative and could be changed. Mr. Niere did not accept this explanation because this would not have been in keeping with standard operating procedure at this point in the equalization process within the Equalization Section. That is, once the equalization supervisor makes changes in the figures developed by the appraiser and the field supervisor and returns them to the field supervisor, these are the final figures from the district unless the field supervisor disagrees with the equalization supervisor's recommendations, in which case the equalization supervisor makes the final decision if they are unable to each agreement. In this case, appellant made the changes in the document

generated by the appraisers (Ms. Wolf) and the field supervisor (Mr. Schnagl) and returned the document to Mr. Schnagl with no indication her figures were not final. There was no discussion between them. Mr. Schnagl returned the document to Ms. Wolf. He understood that pursuant to standard office policy she would enter the figures as revised by appellant into her equalization summary sheets as final figures. The only sense that the figures appellant entered onto Respondent's Exhibit 7 could be considered as not final is if there were changed conditions — e.g., new data or information coming to light, discovery of an eror, etc. On this record there was no indication that there was any reason to anticipate changed conditions.

22. Appellant also stated that she had looked more at the final values of the municipalities rather than the adjustments to the classes of property. Mr. Niere did not accept this explanation because it was contrary to respondent's basic approach in the equalization process, which was first to determine the value of each class of property, which then determines the total value for the municipality.

23. Appellant at some point in time completed a study related to the Town of Washington that was reflected in a document consisting of several handwritten sheets marked as Appellant's Exhibit 10. She testified that she had been working on this study when she was interviewed by Mr. Niere on May 9, 1989, and that she had it with her, but did not produce it at her predisciplinary meeting held on June 5, 1989, which she attended with her lawyer, and which lasted two to three hours. Appellant was asked twice at this meeting whether she had conducted a study with respect to the Town of Washington agricultural improvements. She did not say she had done such a study. The Commission finds that appellant did not have said document (Appellant's Exhibit 10) with

her when she attended the predisciplinary meeting on June 5, 1989, and the document was not in existence at that time. The Commission also finds appellant was not in the process of doing the study reflected in this document, in any meaningful sense, when she was interviewed by Mr. Niere on May 9, 1989.

24. Appellant ultimately submitted to Mr. Niere on June 1, 1989, a 5% reduction in the Town of Washington agricultural improvements. This figure was adopted by respondent as its final value.

25. Appellant's actions directing Ms. Wolf to reduce the value of the agricultural improvements in the Town of Washington, and subsequently in reducing that value by 15% on Respondent's Exhibit 7 were motivated primarily if not entirely by political considerations, and were not based on generally accepted principles of equalization.

26. Appellant's aforesaid actions, as motivated, were inimical to the statutory purpose of respondent's equalization program and had a tendency to impair the performance of the duties of her position and the efficiency of the group with which she worked.

## CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(c), stats.

2. Respondent has the burden of proof.

3. Respondent has sustained its burden of proof.

4. Appellant's demotion was for just cause and was not an excessive penalty.

## DISCUSSION

A critical aspect of this case is appellant's subjective motivation for directing Ms. Wolf to reduce the Town of Washington agricultural improvement value and then making the change after Ms. Wolf did not comply. For a supervisor of equalization to cause a change in property values for political reasons and without a basis in generally accepted principles of equalization would be at odds with the essence of the DOR equalization program and a serious breach of the employe's responsibilities.

The most direct evidence of appellant's motivation was provided by Ms. Wolf's testimony. She testified that appellant told her to lower the value of the Town of Washington agricultural improvements and gave her a piece of paper (Respondent's Exhibit 9) with the revised values written on them. Ms. Wolf further testified that when she told appellant she didn't think she could do that because she hadn't lowered these values for the other towns, appellant said "do it, it's political, add it to the residential improvements if you have to." Appellant denied both having made these statements and having given this document to Ms. Wolf, and testified she had told Ms. Wolf "When and if you get to the Town of Washington, if you could take a look at the agricultural buildings there, and make an adjustment, fine, and if you can't, fine, but it's a very political situation out there." The conflicting accounts of appellant's statement create an obvious credibility conflict which the Commission resolves in favor of respondent.

Based on this record, Ms. Wolf's credibility is weakened by evidence that she did not like appellant, and this could provide a motivation for Ms. Wolf to create trouble for appellant. On the other hand, appellant's testimony was

plagued with inconsistencies and implausibilities, and in some instances was contradicted by dispositive opposing evidence.

One of the more significant areas that undermined appellant's credibility involved her testimony about the study regarding the Town of Washington agricultural improvements, which was reflected in Appellant's Exhibit 10. She testified that she had started this study on Friday, May 5, 1989, and that it had not been completed as of May 9th when she was interviewed by Mr. Niere. She further testified that she did not mention this study to Mr. Niere on May 9th because she had been distracted and upset by an outburst by Ms. Wolf that had occurred shortly after Mr. Niere arrived and before appellant was interviewed by Mr. Niere. This assertion is patently incredible given that she had an extensive interview with Mr. Niere in which she set forth an extensive, multi-faceted rationale for the reduction, see Findings 17-22, above. Certainly, if she had been working on a study, she would have mentioned it.

Appellant was questioned as to why she had not shown or given Mr. Niere the study prior to the June 5, 1989, predisciplinary meeting. She first testified that she "never had the opportunity because "he was not back in the office then, during the month of May, and I never saw him physically until June 5th at that meeting." Then, in response to the obvious question of why she had not mailed it to him, she said it would have served no purpose because she had already mailed him the final economic values wherein the agricultural improvements had been changed to minus 5%.

Appellant also testified she had this report (Appellant's Exhibit 10) in her briefcase during the two to three hour predisciplinary hearing she attended with her lawyer in Madison on June 5, 1989, and that she didn't

remember either if anyone asked her if she had conducted a study that supported the reduction, or whether she had mentioned the study. It is clear based on respondent's evidence that she was asked this question at the meeting but that she did not mention the study. When appellant was asked why she had not produced the study at this meeting, she first said she "never had a chance" to have done so. Then, in an apparent elaboration of this, she said she had not produced it because she thought respondent's officials were hostile and had already made up their minds, that her answers were cut off and ridiculed on numerous occasions, and that it would have served no purpose to have produced the study. Appellant's testimony is patently incredible. Appellant attended a two to three hour predisciplinary meeting with her attorney that had been preceded by a notice (Respondent's Exhibit 2) stating that her two immediate supervisors' Niere and Holmes, had recommended demotion, and that "[w]e have not seen any objective evidence supporting this reduction in value for farm improvements for the Town of Washington." During the course of that meeting, appellant was asked at least twice whether the reduction had been supported by a study. It is unbelievable she failed to produce a report she had in her briefcase that presumably would have addressed these critical concerns because she did not think it would have done any good because the members of management were hostile and had already made up their minds.[1]

Appellant also testified that when she entered the Town of Washington adjustments on Mr. Schnagl's work sheet, Respondent's Exhibit 7, this was a "tentative" action and a "starting point":

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[1] Appellant tape recorded this meeting. She testified that she had failed to produce the tapes (which would have been the best available evidence of what actually was said during the course of the meeting) in response to a discovery request because they had been lost.

> ...the 15% was a starting point to achieve a relationship between the sales and the projected equalized value to arrive at a number somewhere between 95 and 105% of market value....
>
> Q and what did you think that running a trial 15% reduction in ag improvements for the Town of Washington was going to show you?
>
> A What I was looking for was a total value in the agricultural class so that we could then run the unit value projection maps. After the unit value projection maps I would be able to compare across the township lines, and that also gave me additional time where I would be able to take a look at the field review versus the field sales of both John and Janice Srynkowski had worked on.

There is no way to square the notion that this was a tentative action and a starting point for further analysis with other parts of this record. The standard operating procedure in the office was that once appellant made the changes on Mr. Schnagl's workup (Respondent's Exhibit 7), the numbers had not been changed after consultation between her and Mr. Schnagl, and he had given them back to the appraiser, the numbers were considered final in the absence of new developments. They were only tentative in the sense they could be changed, but they were supposed to be the most accurate evaluation available when made. Appellant made the change on Respondent's Exhibit 7 and gave it to Mr. Schnagl without any indication that it was a tentative action or some kind of starting point for further analysis. Mr. Schnagl believed the numbers were final. He testified that he heard about Ms. Wolf's complaint "about 15 minutes after I'd carried the file back to Eleanor's desk and that was when after we had basically finalized the numbers." If appellant actually had believed at the time that the Town of Washington changes were only tentative and a starting point for further analysis, it is difficult to understand why she did not apprise Mr. Schnagl of this.

Anther example of implausible testimony by appellant was in connection with Respondent's Exhibit 9, her handwritten note setting forth

values of agricultural improvements for the Town of Washington for 1988 and 1989. She testified that she got this data in a phone call from Mr. Coenen's wife. Appellant denied that she gave the document to Ms. Wolf, as the latter alleged. Rather appellant testified that she put the document on a bulletin board in her office from whence it somehow disappeared.

That appellant's actions with respect to the Town of Washington were politically motivated is supported by another very similar transaction which occurred about the same time. In that case, appellant summarily directed another Property Assessment Specialist, John J. Bell, to make changes in the Town of Gordon for blatant political reasons having to do with a Realtor there being on a realty board with the DOR Secretary. While appellant also denied having done this, both she and another of her witnesses testified there was no bad blood between Mr. Bell and appellant, and there was no indication he had any motivation to have fabricated this story.

Respondent's contention that appellant lacked a legitimate basis for her actions with respect to the 15% reduction in the Town of Washington agricultural improvements is supported by the inadequacy of appellant's explanations to Mr. Niere at the time he came to Eau Claire on May 9, 1989, to investigate the matter. While it can be said that the circumstances in this municipality supported the general concept of reducing the value of its agricultural improvements, the data and other information the appellant adduced on May 9th was not of the nature that typically would be relied on for the change that was made. Probably the most telling problem for appellant's case is that the sales ratios for this class of property in the towns in Eau Claire County ranged from 106% to 228%, yet the Town of Washington with a 117% ratio was singled out for change.

Appellant made some vague allegations that some kind of conspiracy to remove her from her position existed between disgruntled subordinates and superiors who resented her because she was not part of the "good old boy" network. While it is true that a number of her subordinates were hostile toward her, it also is true that Mr. Bell was not in this group, that the testimony of Ms. Wolf was corroborated by substantial other evidence, and that appellant's credibility was seriously undermined by inconsistencies, implausibilities, and conflicts with clearly-established facts. There was no evidence that her superiors resented her status. On this record, there is no basis upon which to conclude that appellant was the victim of some kind of conspiracy.

In State ex rel Gudlin v. Civil Service Comm., 27 Wis. 2d 77, 87, 133 N.W. 2d 799 (1965), the Supreme Court defined "just cause" for discharge as follows:

> ...one appropriate question is whether some deficiency has been demonstrated which can reasonably be said to have a tendency to impair his performance of the duties of his position or the efficiency of the group with which he works.

Appellant's actions with respect to the 15% reduction in the Town of Washington agricultural improvements were shown to have been largely politically motivated rather than having been based on generally accepted principles of equalization. Such actions clearly conflict with respondent's role in the equalization program and the need to remain untainted by political considerations, and have a tendency to impair the duties of her position and the group with which she works, as required for a showing of just cause under Gudlin. Appellant did not really attempt to contest the degree of discipline imposed, and the Commission agrees with respondent that in light of the seriousness of the misconduct proven and the degree to which it tends to

undermine respondent's central statutory role with respect to the equalization program, demotion was not an excessive penalty.

ORDER

Respondent's action demoting appellant from Property Assessment Supervisor 2 to Property Assessment Specialist 3 is affirmed and this appeal is dismissed.

Dated:_____, 1990 STATE PERSONNEL COMMISSION

_____
LAURIE R. McCALLUM, Chairperson

AJT:gdt/1

_____
DONALD R. MURPHY, Commissioner

_____
GERALD F. HODDINOTT, Commissioner

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